

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. (This is a GIL).

August 3, 1999

Dear Xxxxx:

This letter is in response to your letter dated June 25, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY Own and operate a chain of hotel's throughout the United States. There are some states that allow exemptions on certain purchases depending upon how they are used or consumed in their hotel operation. For example, Ohio allows an exemption on the cleaning of the carpeting and furniture in the guest rooms. However, they do not allow the same exemption for the cleaning of the carpeting and furniture in the common areas of the motel.

COMPANY Does its best to comply with all state sales/use tax laws and regulations. We self assess use tax not charged us on taxable purchases and also try to utilize all applicable exemptions afforded to us.

Therefore, at your earliest convenience, we would like to know if your state allows an exemption on the services captioned above.

If you have any questions, you may contact me directly at ####.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1996 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1996 State Bar Edition).

Carpet and upholstery cleaning are subject to the Service Occupation Tax Act. There is no exemption for sales of such service to hotels. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax

liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If the servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Serviceman may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to the sale of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customer nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

The tax treatment of the purchase of chemicals used in carpet and upholstery cleaning depends upon whether or not the chemicals are actually transferred to the service purchaser. Carpet and upholstery cleaning are not likely to result

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in the transfer of tangible personal property since the chemicals are generally removed from the fabric or carpet as a part of the cleaning process. However, Scotchguard and deodorizer do result in a transfer of tangible personal property because these chemicals remain on the treated surface.

Items used by a business in conducting its business are subject to Use Tax. Generally, items purchased by a hotel for the convenience of its guests, such as tissues, soap, and shampoo, are subject to Use Tax. Such items may not be purchased for resale and are considered costs of doing business that are not exempt from tax. See 86 Ill. Adm. Code 130.410, enclosed. Items, such as cleaning supplies, furniture, and linens, are also similarly costs of doing business and are taxable. Services, in which no tangible personal property has been transferred, such as lawn mowing or snow removal, are not subject to Retailers' Occupation Tax and Use Tax in Illinois.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte  
Associate Counsel

GR:msk

Enc.